

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

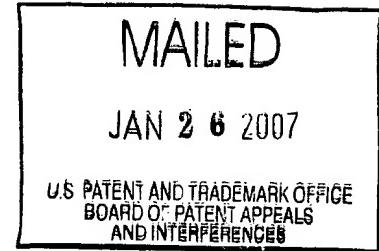
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* OLIVIER DAUDE and OLIVIER HERICOURT

Appeal No. 2006-3188  
Application No. 09/696,518  
Technology Center 2100

ON BRIEF



Before RUGGIERO, DIXON, and BLANKENSHIP, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the Examiner's Final Rejection of claims 1, 4, 6-10, 14, 17, 19-23, 27, 30, and 32-36 , which are all of the claims pending in this application. Claims 2, 3, 5, 11-13, 15, 16, 18, 24-26, 28, 29, 31, and 37-39 have been canceled.

We REVERSE.

## BACKGROUND

Appellants' invention relates to a method and system for preventing unauthorized server interference in an internet protocol network. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method for preventing unauthorized dynamic host configuration servers from responding to client configuration requests in an Internet Protocol (IP) network, said method comprising the steps of:

broadcasting host configuration requests from a server checker client;

receiving configuration offer messages from one or more dynamic host configuration servers, said configuration offer messages delivered to the server checker client responsive to the broadcast host configuration requests;

detecting an unauthorized dynamic host configuration server within said IP network in accordance with server identification data within the configuration offer messages; and

responsive to said detecting step, unicasting host configuration requests from said server checker client to said unauthorized dynamic configuration server such that said unauthorized dynamic host configuration server is unable to respond to configuration requests from network clients.

## PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Daizo	6,424,654	Jul. 23, 2002
Lim et al. (Lim)	5,884,024	Mar. 16, 1999

R. Droms et al. (Droms), Authentication for DHCP Messages, August 1998, IETF: Internet Draft, p. 1-13.

Douglas E. Comer "Internetworking with TCP/IP Principles, Protocols and Architectures" 4th Edition. p. 455 (2000).

"The Authoritative Dictionary of IEEE Standards Terms" 7th Edition., p. 1233 (2000).

## REJECTIONS

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejections, we make reference to the Final Rejection (mailed Jan. 19, 2005) and Examiner's Answer (mailed Jun. 23, 2006) for the reasoning in support of the rejection, and to Appellants' corrected brief (filed Aug. 31, 2006) and Reply Brief (filed Jul. 25, 2006) for the arguments thereagainst.

Claims 1, 4, 6-10, 14, 17, 19-23, 27, 30, and 32-36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daizo in view of Droms and in further view of Lim.

## OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the

Examiner. As a consequence of our review, we make the determinations that follow.

We assume that the summary of the claimed subject matter at page 4 of the Brief should refer to independent claim 27 rather than claim 15 which has been canceled.

### **35 U.S.C. § 103**

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d

1011, 1017, 154 USPQ 173, 177 (CCPA 1967). Our reviewing court has repeatedly cautioned against employing hindsight by using the Appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Props. Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, “the [E]xaminer can satisfy the burden of showing obviousness of the combination ‘only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.’” In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” Dembiczak, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations as recited in independent claim 1. Appellants argue that the Examiner has not shown that the prior art teaches or fairly suggests the recited “detecting an unauthorized dynamic host configuration server within said IP network in accordance with server

identification data within the configuration offer messages" (Brief, p. 6).

We agree with Appellants, and find that the Examiner has not sufficiently established a *prima facie* case of obviousness of the claimed invention.

In response to the Appellants' argument, the Examiner maintains that:

In response to the Applicant's argument that Droms does not disclose authenticating a server using server identification data, the Examiner respectfully disagrees. As cited in the office action, Droms discloses two techniques for authenticating DHCP servers. Protocol 0 discloses using a server authentication token to authenticate the DHCP server. The token is received by the client and compared to a shared token, if the tokens match the server is authenticated, if not the client must discard the message. With Protocol 1 the server replies with a DHCPOFFER message that includes authentication information, including entity authentication information [Answer, p. 3].<sup>4</sup>

Here, we find that that the Examiner treats (1) detecting identification of a server and (2) authenticating a server using server identification data as the same thing. Above in the Examiner's responsive arguments, the Examiner interchanges the terms authentication information and the identification information as recited in the claim language. We cannot agree with the Examiner wherein the two functions do not have to necessarily be the same. The Examiner has not shown or explained why it would have been readily apparent to one skilled in the art that server authentication and server identification data would have been the same or why it would have been obvious to one skilled in the art at the time of the invention to use one in place of the other. Therefore, we do not find that the Examiner has discharged his initial burden of establishing a *prima facie* of obviousness.

With respect to Appellants' argument that the claim requires that server identification data (IP address) within the configuration offer message is used as the server identification (Brief, p. 7), the Examiner maintains

(Answer, p. 4-5) that the claim does not recite the IP address. The Examiner additionally cites a reference to Comer which was not applied against the claims to show that the DHCP messages include the IP address. Since the Examiner did not apply the reference, we will not consider it here. While we agree with the Examiner with respect to the format of DHCP message format, the Examiner has not shown or adequately provided a line of reasoning why it would have been obvious to one skilled in the art at the time of the invention to use this identification data in place of the authentication data or why they would have been the same data. Without such a showing, we are left to speculate as to the propriety of the Examiner's rejection which we will not do. It is the Examiner initial burden to clearly establish a prima facie case of obviousness, and we find that the Examiner has not done so in the Final rejection and Examiner's answer in this prosecution.

Appellants argue the benefits of using the server identification ~~data~~ to detect unauthorized servers and that Appellants' technique does not require two-sided authentication required using tokens as taught by Droms. We find no support for Appellants' argument in the language of independent claim 1. In this case, we find that the Examiner has seemingly found relevant art and combined it but did not squarely address the express language of the claim and instead discussed authentication data rather than identification data as recited in the claim and argued by Appellants which is not sufficient to establish a prima facie of obviousness.

## CONCLUSION

To summarize, we have reversed the Examiner's rejection under 35 U.S.C. § 103(a) of all the claims on appeal.

**REVERSED**

*Joseph Ruggiero*  
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Administrative Patent Judge )  
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 )  
*Joseph L. Dixon*  
JOSEPH L. DIXON ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS  
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